

Robert T. Cummins appeals the denial of his motion to dismiss pursuant to the Interstate Agreement on Detainers (“IAD”). Finding he waived his rights under the IAD, we affirm.

FACTS AND PROCEDURAL HISTORY

On September 19, 2005, Cummins was charged in Knox County with Class B felony robbery. Cummins was released on his own recognizance so that he could complete an existing sentence through work release. A jury trial was set for February 21, 2006 and was continued several times on Cummins’ motion. On February 1, 2007, Cummins filed a plea agreement and requested a change of plea hearing, which was set for March 7, 2007. Cummins failed to appear for the March 7 hearing because he had been arrested and was incarcerated at Graham Correctional Center in Illinois. Knox Superior Court 1 issued a bench warrant.

According to Cummins, he was given paperwork stating Knox County had a “hold” on him. (Tr. at 10.) He provided his caseworker, Linda Billeau, with information so she could request a final disposition of the Knox County charges under the IAD. Billeau prepared the paperwork and sent copies to the Knox County Prosecutor and Knox Superior Court by certified mail. She addressed Knox Superior Court’s copy to “Clerk of the Court” at 102 North Seventh Street, (Exhibit A), but 102 North Seventh Street is the Prosecutor’s address. The Prosecutor’s receptionist signed for both copies on September 4, 2007.¹

¹ The record does not reflect when the parties realized the Knox County Prosecutor had received the Knox Superior Court’s copy by mistake. Cummins acknowledges there is no evidence the Knox County Prosecutor intentionally withheld the documents from the Knox Superior Court.

On February 5, 2008, the State filed a Motion for Status Hearing. The trial court scheduled a hearing for February 22, 2008. The State requested a continuance, and the trial court rescheduled the hearing for March 12, 2008. The hearing was continued again by the agreement of the parties.

On March 14, 2008, Cummins filed a motion to dismiss, alleging that he had to be brought to trial within 180 days of September 4, 2007. A hearing on the motion was held on March 17, 2008. On March 24, 2008, the trial court denied the motion, finding:

1. That the Defendant, Robert T. Cummins, properly notified the Knox County Prosecutor's Office of his request for disposition of his pending criminal charges by Certified Mail received September 4, 2007.
2. That the Defendant, Robert T. Cummins, failed to properly notify the Knox Superior Court 1 of his request for disposition of his pending criminal charges.
3. That while a representative of the Knox County Prosecutor's Office did pick up the Certified Mail intended for the "Clerk of the Court" on September 4, 2007, the Certified Mail in question was, in fact, sent to the wrong address. The mail in question was sent to the address of the Knox County Prosecutor at 102 N. 7th Street, Vincennes, Indiana, rather than to the Office of the Knox County Clerk at 111 N. 7th Street, Vincennes, Indiana.
4. That while the Court understands and appreciates that a series of unfortunate events prevented the Defendant's notice from reaching the Knox Superior Court 1, the fact remains that the Court was not notified as required by Article 3 of the detainer statute, I.C. 35-33-10-4.

(Appellant's App. at 5.) The trial court certified its order for interlocutory appeal, which we accepted.

DISCUSSION AND DECISION

"The IAD is an interstate compact between forty-eight states, the District of Columbia, and the Federal Government, which creates uniform procedures for lodging and executing a detainer." *State v. Robinson*, 863 N.E.2d 894, 896 (Ind. Ct. App. 2007),

trans. denied 869 N.E.2d 460 (Ind. 2007). Indiana and Illinois are parties to the IAD. *State v. Smith*, 882 N.E.2d 739, 742 (Ind. Ct. App. 2008); *see* Ind. Code § 35-33-10-4 (codifying the IAD). When a detainer is filed, the defendant may request a final disposition. *Robinson*, 863 N.E.2d at 896. The defendant communicates with the custodial authority, such as a case manager, who is responsible for forwarding the IAD documents to the prosecutor and the appropriate court of the prosecutor's jurisdiction. *Smith*, 882 N.E.2d at 742-43.

A defendant, who files a petition for a speedy trial pursuant to the IAD, is entitled to be brought to trial within 180 days from the time his written notice of final disposition is received by the trial court and the prosecuting attorney. Generally, a defendant who is not brought to trial within 180 days is entitled to be discharged.

Sipe v. State, 690 N.E.2d 779, 781 (Ind. Ct. App. 1998) (citations omitted).

Cummins argues the 180 day period commenced on September 4, 2007, when the Prosecutor received both copies of Cummins' IAD paperwork, and ended on March 1, 2008; therefore, the trial court erred by denying his motion to dismiss. We review *de novo* the trial court's ruling on a motion to dismiss under the IAD. *Robinson*, 863 N.E.2d at 896. However, the findings underlying the ruling are upheld unless they are clearly erroneous. *Id.*

The State argues Cummins waived his right to be tried within 180 days because he did not object to hearings set outside the 180-day period.² We agree.³

² The State disputes whether a detainer had been lodged against Cummins in the first place. We recognize that a formal retainer is a prerequisite to the application of the IAD. *Robinson*, 863 N.E.2d at 897 (holding bench warrant issued for failure to appear was not a formal detainer triggering rights under the IAD). The State notes the lack of documentary evidence that a detainer had been lodged and asks us to discredit "Cummins' self-serving testimony that the GCC had given him paperwork stating that he had

A “defendant who fails to object to a hearing date prior to the expiration of the 180-day period waives his right to a speedy trial.” *Sipe*, 690 N.E.2d at 781. Sipe was incarcerated in California and had pending charges of murder, burglary, and felony murder in Indiana. On July 19, 1995, the prosecutor received Sipe’s request for a speedy trial pursuant to the IAD. Sipe was returned to Indiana, and he entered a plea agreement on September 25, 1995. A plea hearing was set for October 24, 1995. At the State’s request and without Sipe’s objection, the trial court continued the hearing until January 18, 1996. On January 16, 1996, Sipe filed a motion for discharge because he had not been tried within 180 days. The trial court denied the motion, and Sipe pled guilty to burglary on May 23, 1996. Sipe later filed a petition for post-conviction relief, alleging the trial court erred by denying his motion for discharge. The post-conviction court denied the petition, and we affirmed:

Here, the record reveals that the State was required to bring Sipe to trial by January 15, 1996. Nevertheless, Sipe failed to object when the trial court continued his hearing to January 18, 1996. Rather, Sipe remained silent until the expiration of the 180-day period, when he filed his petition for discharge. Because Sipe failed to object within the 180-day period, he has waived his right to a speedy trial.

Id.

In Cummins’ case, a hearing was scheduled for February 22, 2008, which was within the 180-day period. The hearing was continued to March 12, 2008, a date outside

a ‘hold’ placed on him from Knox County.” (Appellee’s Br. at 8.) The trial court did not make any findings concerning whether there was a formal detainer lodged against Cummins. Because we agree with the State that Cummins waived his right to be tried within the 180 period, we will assume *arguendo* there is a valid detainer rather than attempt to resolve the factual dispute. Likewise, we do not reach the issue of whether the Illinois caseworker’s mistake is chargeable to the State of Indiana.

³ We note Cummins has not replied to the State’s waiver argument.

the 180-day period, without objection from Cummins. It was continued again to March 13, 2008 by agreement of the parties. At the March 13 hearing, Cummins notified the court that he would be filing a motion to dismiss, which he did the next day. Cummins did not object to the continuances; instead, he allowed the 180-period to lapse and then filed a motion to dismiss. Therefore, he has waived his right to be tried within 180 days.

See id.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.